IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2007

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CRP.NPD.No.2028 of 2003

Mustafa Avikkal .. Petitioner/Complainant

Versus

Sulaiman Vayala .. Respondent/Opposite party

Petition filed under Article 227 of Constitution of India against the order dated 04.03.2003 in un-numbered M.P.No. of 2003 in Dispute No.6 of 2000 on the file of the State Consumer Disputes Redressal Commission at Pondicherry.

For Petitioner : Mr.D.Shivakumaran

For Respondent[served] : No appearance

ORDER

The Civil Revision Petitioner herein is the complainant in Dispute No.6 of 2000 before the State Consumer Disputes Redressal Commission, Pondicherry.

2.The revision petitioner/complainant has filed a complaint under section 18 read with sections 12 and 13 of the Consumer Protection Act, 1986 against the respondent/opposite party inter-alia stating that the respondent/opposite party did the construction work without any care and diligence and the work was given to him since the respondent/opposite party is an architect and thinking that he is an expert builder. On verification it was found that the construction was substandard and that money was spent like anything etc.

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3.It is the specific case of the revision petitioner/complainant that RCC roof of the first floor is leaking on all sides and the scene is very pathetic and from the sight itself, it will be revealed that the intention of the respondent/opposite party was to spindle money from the revision petitioner/complainant by making construction investing lesser amount and when complained about the leakage, the respondent/opposite party stated the same will be cured and now, the leakages exposes its maximum height and that the leakage cannot be cured or rectified and because of the carelessness and the way of dealing with the work, the leakage took place and therefore, the revision petitioner/complainant claimed a sum of Rs.3,00,000/- towards damages on the above count. It is the further stand of the revision petitioner/complainant that as per the calculation, the total amount payable to the respondent/opposite party is only Rs.6,38,650/- and the amount calculated by the respondent/opposite party is Rs.8,70,000/- and when the revision petitioner/complainant questioned about the veracity of the account, the respondent/opposite party discontinued the work and the revision petitioner/complainant was perforced to complete the work through others since the revision petitioner/complainant was very much in need of occupation of the house. The revision petitioner/complainant kept all accounts regarding the work done by him through other contractor with corresponding skills.

4.It is the averment in the complaint in Dispute No.6 of 2000 filed by the revision petitioner/complainant before the State Consumer Disputes Redressal Commission, Pondicherry that the respondent/opposite party made a calculation showing high amount and it is noted that even the measurements regarding some items are wrong and it appears that the balance payable, according to the account was Rs.2,28,530.60. In short, the revision petitioner/complainant in the complaint in Dispute NO.6 of 2000 has prayed for the relief of directing the respondent/opposite party to pay a sum of Rs.7,31,350/- including damages of Rs.2,00,000/- claimed under the caption 'mental tension and inconvenience'.

5.The respondent/opposite party in the statement filed before the State Consumer Disputes Redressal Commission, Pondicherry has among other things, stated that work was done by the respondent/opposite party to the satisfaction of the revision petitioner/complainant and the complainant and his representative used to inspect the work and were satisfied about the work and since he was satisfied with the work, the revision petitioner/complainant regularly used to pay to the respondent/opposite party and the amount of the construction work was given to the revision petitioner/complainant on 13.12.1999 detailing the work done and the amount due to the respondent/opposite party and as per the accounts furnished to the revision petitioner/complainant, a sum of Rs.2,28,530.60 was due to the respondent/opposite party and towards the payment of this sum, two cheques were issued by the revision petitioner/complainant bearing Nos.058190 dated 15.03.2000 for Rs.1,00,000/- drawn on Catholic

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Syrian Bank Limited, Choroda in favour of the respondent/opposite party and when these cheques were presented by the respondent/opposite party to the State Bank of Travancore, Peringathur Branch. The said cheques were returned by the Bank on 08.07.2000 with two return Memos containing an endorsement 'insufficient funds' and therefore, the cheques were not honoured.

6.A complaint was filed by the respondent/opposite party before the learned Judicial First Class Magistrate, Thalassery, as C.C.No.8 of 2001 and it is still said to be pending. The respondent/opposite party filed a suit in O.S.No.51 of 2001 on the file of the Sub Court, Thalassery for realization of this amount and it is also pending.

7.The defence of the respondent/opposite party as seen from the statement filed by him is that there was no deficiency of service and that the complaint was legally unsustainable.

8.It is not in dispute that Dispute No.6 of 2000 was dismissed by the State Consumer Disputes Redressal Commission, Pondicherry dated 17.01.2003. The State Consumer Disputes Redressal Commission in its order dated 17.01.2003 has inter-alia observed that 'when once a civil suit is pending for the relief sought for, the rule of law pointed out by the counsel for the opposite party in his arguments, the complaint itself is therefore not maintainable' and it was ultimately held that the complaint was not maintainable in law.

9.The revision petitioner/complainant has filed a miscellaneous petition in Dispute No.6 of 2000 which is un-numbered on 20.02.2003 praying the State Consumer Disputes Redressal Commission, Pondicherry to set aside the order passed in Dispute No.6 of 2000 on 17.01.2003 after hearing the case of the revision petitioner/complainant in the matter. The revision petitioner/complainant in un-numbered miscellaneous petition has stated that he was in employment abroad [in Syria] and that in lieu of his employment which required frequent travelling, he reposed trust and confidence in his advocate in the matter to represent his case and thus, he did not appear for hearing in the matter before the State Consumer Disputes Redressal Commission and it is essential that an opportunity of hearing may be granted on merits of all facts and applicable laws and precedents in matter.

10.The revision petitioner/complainant came to know about the dismissal of his complaint in Dispute No.6 of 2000 upon despatching certified copy of the said order on 24.01.2003. In un-numbered M.P. of 2003 in Dispute No.6 of 2000, the State Consumer Disputes Redressal Commission, Pondicherry, has passed orders on 04.03.2003, categorically stating that the order passed by the State Commission was on merits and that the only legal course open for the revision petitioner/complainant is

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to prefer revision to the National Commission and when the matter was called, the advocate on record and the party, both were absent. No representations were made on their side and that the Commission having perused the entire material available on record, passed orders dated 17.01.2003 on merits and as such, there was no need to hear the revision petitioner/complainant since final orders were passed and under these circumstances, the miscellaneous petition was rejected.

11.As against the orders passed in the un-numbered M.P. of 2003 in Dispute No.6 of 2000 on 04.03.2003 by the State Consumer Disputes Redressal Commission, Pondicherry, the revision petitioner/complainant has filed the present Civil Revision Petition.

12.As far as the present case is concerned, the filing of O.S.No.51 of 2001 for realization of the amount filed by the respondent/opposite party before the Sub Court, Thalassery, and the matter is subjudice, is not disputed by the revision petitioner/complainant. In this connection it is to be pointed out that in OSWAL FINE ARTS V. H.M.T.-1991 CPC 43……. [1991] 1 CPJ 330, it is observed by the National Commission that 'an important principle when a matter is subjudice before the ordinary Civil Court of the land, the Consumer Commission cannot and will not entertain any claim for compensation in respect of the same subject matter'.

13.In S.JAMES VINCENT V. GREATER COCHIN DEVELOPMENT AUTHORITY-1994 [1] CPJ 174 [NC], the National Commission upheld the order of the State Commission holding that the complainant suppressed the fact that the matter was already subjudice in the Sub Court before a civil court and that it was held that the complaint was gross abuse of the Consumer Protection Act,1986.

14.The orders passed by the State Consumer Disputes Redressal Commission, Pondicherry, in Dispute No.6 of 2000 of 17.01.2003, dismissing the complaint, has become final and there cannot be any dispute that the said order was passed on merits. As against the said orders passed by the State Consumer Disputes Redressal Commission, Pondicherry, the revision petitioner/complainant has to take further proceedings in the manner known to law. It is suffice for this court to state that without taking recourse to the further proceedings available under law, it is not open to the Civil Revision Petitioner to file M.P. of 2003 [un-numbered] praying the Commission to set aside the order passed by it in Dispute NO.6 of 2000 dated 17.01.2003 inasmuch as the order passed on 17.01.2003 were on merits. As such, the Civil Revision Petition filed by the revision petitioner/complainant is not maintainable per-se in law and the same is liable to be dismissed in the considered opinion of this court.

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15.As a matter of fact, when the respondent/opposite party has filed a suit in O.S.No.51 of 2001 on the file of the Sub Court, Thalassery, before a civil court, the complaint in Dispute No.6 of 2000 filed by the revision petitioner/complainant has no legs to stand in the eye of law, in the considered opinion of this court.

16.The Civil Revision Petitioner, though in the Memorandum of grounds in the Civil Revision Petition has taken a plea that the order dated 04.03.2003 passed by the President of the State Consumer Disputes Redressal Commission, Pondicherry, is contrary to Section 14[2] of the Consumer Protection Act for want of Corum. Learned counsel for the revision petitioner has not urged the same before this court. It is relevant to point out that the M.P.No. of 2003 filed by the revision petitioner/complainant to set aside the orders passed by the State Consumer Disputes Redressal Commission, Pondicherry, on 17.01.2003 was rejected by the State Commission at the un-numbered stage on the ground of maintainability of the said petition holding that the orders passed on 17.01.2003 by the State Commission were on merits and final one.

17.In this connection, it is useful to refer to section 29[A] of the Consumer Protection Act, 1986 which envisages that, 'no act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its Members or any defect in the constitution thereof' and the word 'only' in the opinion of this Court clearly indicates that the section bars a challenge on the ground only of defect in the constitution of any Forum or any Commission.

18.Therefore, in view of the bar under section 29[A] of the Consumer Protection Act,1986, the plea taken in the grounds of the Civil Revision Petition that the order dated 04.03.2003 of the State Commission is contrary to section 14[2] of the Consumer Protection Act, 1986 for want of Corum is otiose and untenable.

19.In the light of the above discussions, this court comes to the definite conclusion that the Civil Revision Petition is not maintainable in the eye of law and the same is hereby dismissed in the interest of justice and the orders passed by the State Consumer Disputes Redressal Commission, Pondicherry, dated 04.03.2003 in un-numbered M.P.No. of 2003 in Dispute No.6 of 2000 is confirmed. However, there shall no order as to costs.

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20.Lastly,though the learned counsel revision petitioner/complainant, before this court, has prayed for a liberty to be given to the revision petitioner/complainant as per section 14 of the Limitation Act, 1963 in regard to the exclusion of time of proceeding bona fide, in the court without jurisdiction, this court opines that the revision petitioner/complainant is ineligible to claim the said relief inasmuch as the complaint was preferred before the proper Forum, viz., State Consumer Disputes Redressal Commission, Pondicherry.

Ap

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The State Consumer Disputes Redressal Commission
   Pondicherry.

2. The Record Keeper,
   V.R.Section,
   High Court, Madras.

+1 cc to Mr.D.Shivakumaran, Advocate Sr.No.71590.

JRG(CO)
dcp.7.12

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